IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.MC.No. 4494 of 2005()

CRRP.47/2005 of ADDL.SESSIONS COURT,-I, MAVELIKKARA
CC.610/2004 of JUDL.MAGISTRATE OF FIRST CLASS, HARIPAD
(CMP 4813 2005)

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PETITIONER: RESPONDENT/COMPLAINANT.

T.V.SUGATHAN, S/O. C.K.KRISHNAN,
KRISHNA BHAVANIL, VALIZHAKUZHI MURI,
CHEPPAD VILLAGE.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS: ACCUSED & STATE.

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1. RAJU M.THOMAS, S/O. THOMAS THOMAS,
MADATHIL PARAMBIL PUTHEN VEETTIL, THITTAMEL,
CHENGANNUR.

2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.HARIDAS
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/02/2007, ALONG WITH CRMC NO.70 OF 2007 & CRRP NO.365 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.4494 of 2005 & 70 of 2007 and
Crl.R.P.No.365 of 2007

Dated this the 1st day of February, 2007

ORDER

These proceedings arise from common order passed by the Sessions Court in three connected revision petitions.

2. The petitioner is the complainant in a prosecution under Section 138 of the N.I Act. The cheque is for an amount of Rs.30 lakhs. Signature in the cheque, it is submitted, is not disputed. Notice of demand, it is again submitted, did not evoke any response. In the course of the trial a contention appears to have been taken that the real liability was only Rs.10 lakhs and the cheque in question was issued only as security. The same is now being misutilised to stake a claim for Rs.30 lakhs, it is contended. There is a further contention that an amount of Rs.8 lakhs has been paid and discharged under Ext.D5 receipt/voucher. The complainant denied that document. Later it was put in the court through the accused. After the closing of the defence evidence, the accused filed 3 applications. The first was to re-open the case and recall PW1 for further cross examination. The second was to request the court to obtain the specimen signatures of the complainant in court and to use them for comparison under Section 73 of the Evidence Act. The third was to call for a pass book which had earlier been produced before the court by the complainant himself.

3. The applications were opposed by the complainant. The learned Magistrate dismissed all the 3 petitions. The court of revision however came to the conclusion that the petitions are liable to be allowed and that grant of such prayer is essential for a just decision of the case.

4. The petitioner has come before this Court challenging the orders passed by the revisional court reversing and setting aside the orders passed by the trial court.

5. It is now evident that though the petitioner was allegedly confronted with a document in the course of cross examination, there is no specific evidence to show that it was Ext.D5, which the petitioner was confronted with. As the petitioner denied the same, it was not marked; nor was any number assigned to that document at that stage. That document was not produced in court at that time. Later the same was produced and was marked through the accused. There is thus absence of evidence to show that it was this document with which the complainant was confronted with. In these circumstances, the prayer to reopen the evidence and recall PW1 appears to be absolutely justified.

6. Ext.D5 is disputed and denied by the complainant. The accused only wants the specimen signatures to be made available so that they can be used for comparison to assess the genuineness and

acceptability of Ext.D5. I can find absolutely nothing wrong in that request made by the petitioner also.

7. Regarding the third application, the short contention is that the pass book has already been produced and taken back by the complainant. The complainant is willing to produce the same again subject to the claim for return of the same on production of a certified photostat copy in substitution.

8. I have referred to the factual disputes. I am not, at any rate, satisfied that the impugned orders do warrant interference by invocation of the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C, which is to be invoked sparingly and in exceptional cases in aid of justice. I am, in these circumstances, not persuaded to interfere on merits with the orders passed by the learned Sessions Judge in revision.

9. There is of course a dispute raised as about the maintainability of the revision petitions before the Sessions Court. It is admitted at all hands that this dispute - that the revisions are not maintainable, was not raised before the court of revision. The impugned orders are intermediate orders and not purely interlocutory orders beyond the revisional jurisdiction of the court, it is submitted. I do not find it necessary to go into that question in any further detail. Intermediate orders are revisable. Orders which involve decisions at moment affecting the rights of parties substantially must be reckoned

as intermediate orders and not purely interlocutory orders as to be beyond the jurisdictional competence of the revisional court. At any rate, such objection having not been raised admittedly before the court of revision, I am satisfied that that technical contention can persuade this Court to invoke the jurisdiction under Section 482 Cr.P.C.

10. The learned counsel for the petitioner submits that the real concern of the petitioner is that unnecessary delay and protraction would result from such applications. I find merit in that objection raised. I am satisfied, that the interests of justice shall be served ideally by issuing specific direction to the court below to dispose of the case finally as expeditiously as possible, at any rate - within a period of 45 days from the date on which a copy of this common order is placed before the learned Magistrate. Issue copy to the counsel for the petitioner for production before the Magistrate. Both parties shall appear before the learned Magistrate on 12.02.2007 to continue the proceedings.

11. These Crl.M.Cs and Crl.R.P are, in these circumstances, dismissed, but with the specific observation.

(R.BASANT, JUDGE)

rtr/-